IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.456 OF 2006.

Bhujangrao Damu Patil. ... Appellant.

Versus.

Smt.Tarabai H.Mane. ... Respondent.

Shri P.G.Lad for the Appellant.

CORAM : ABHAY S.OKA, J.

DATED : 3rd May, 2006.

P.C.:

1. Submissions of the learned Advocates appearing for the parties were heard on the last date. Today I have heard further submissions.

2. The Appeal is by the original Defendant No.2. The subject matter of the suit is agricultural land and house property which were originally owned by one Krishna Subana Mane who died on or about 8th October 1947. The said Krishna was survived by his widow Bhagubai and daughter Hausabai. According to the case of the original Plaintiffs the said Bhagubai executed a registered sale deed on 7th February 1966 in favour of the original Plaintiffs. The said Bhagubai expired on 11th February 1966. The present Appellant who is the Defendant No.2 claims to be an adopted son of the said Housabai. A suit for declaration and injunction came to be filed by the Respondent Nos.1 to 4. The trial Court decreed the suit. In an appeal preferred by the Appellant, the decree has been confirmed.

3. The learned Advocate for the Appellant submitted that the sale deed dated 7th February 1966 allegedly executed by Bhagubai is not at all proved. He pointed out that the sale deed was executed just four days prior to the demise of the said Bhagubai. He submitted that Hausabai, who was daughter of Krishna was also allowed to use the suit agricultural land in lieu of her maintenance. He, therefore, submitted that the said Hausabai will also get a right under section 14 of the Hindu Succession Act, 1956. He submitted that even assuming that Bhagubai had executed the sale deed, the original Defendant No.1 Hausabai will have undivided right, title and interest in the suit property.

4. I have considered the submissions. The Courts below have recorded a concurrent finding that the present Appellant and other Defendants have failed to establish that the sale deed is a creation of fraud. There is a concurrent finding that the sale deed was legal and valid and executed for consideration. A perusal of the written statement filed by the original Defendant No.1 shows that the contention which is sought to be raised in this Appeal that Hausabai was enjoying the said agricultural land in lieu of her maintenance is not at all raised in the written statement. On coming into force of the Hindu Succession Act, 1956 Bhagubai became the exclusive owner of the suit property. As the

original owner Krishna died in the year 1947, Hausabai had no right to have any share in the estate of her father. That is the reason why the Courts below have held that Bhagubai had exclusive ownership to the suit property. The said Bhagubai had sold the said property by registered sale deed in favour of the original Plaintiff. Therefore, no fault can be found with the decree of declaration and injunction passed by the trial Court and confirmed by the Appellate Court. There is no merit in the Second Appeal. The same is accordingly dismissed.

Judge.